IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 749 OF 1994

Yeshwant Ganpati Aatkari
since deceased by his heirs
and L.Rs.
Laxmibai Y. Aatkari & Ors. ..Appellants

versus

Mahadeo Gopal Nagmale & Ors. ..Respondents

Mr. B. G. Vaidya for the Appellants.
Mr. Rahul S. Kate for the Respondent No.1.
Ms. Amita Borkar with P. G. Lad for the Respondents No. 2, 3 and 4.
Mr. S. N. Gawade, AGP for the Respondent No.5.

CORAM : D. G. DESHPANDE,J.

DATE : 19TH JANUARY,2005

ORAL ORDER :

1. Heard counsel for the appellants and the Respondents.

2. Appellant is the original tenant against whom the suit came to be filed by and on behalf of the trust for recovering possession of the property

on the ground that the sale deed of the suit land in favour of the defendant Bhikhu was illegal. The suit was opposed by the appellant on the ground that Bhiku was the owner of the property and the property was not the trust property. The trial court came to positive conclusion on the basis of the documents that the suit property was a trust property. P.W. 1 plaintiff sought permission from Charity Commissioner to institute the suit. He has relied upon the judgment of the Tenancy Authorities holding that the property is a trust property and therefore the property could not be purchased by the tenant, copy of the judgment was produced by P.W. 1 Plaintiff.

3. Counsel for the appellant tried to contend that there was nothing on record that the property was a trust property. This finding was rightly negatived by the trial court because there is voluminous record in that regard. The most important judgment of the Tenancy Authorities that the property is a trust property. Secondly, Charity Commissioner has given permission to institute the suit and when such a permission is given, it can be presumed that the Charity Commissioner was satisfied that the suit was for recovery of the trust property. Thirdly and most importantly the defendant - appellant in his evidence could not show

as to how his vendor Bhiku was the owner of the property. His Evidence runs into 10 lines on oath without anything being stated by him about the rights of Bhiku in respect of the property.

4. Further the property purchased by the defendant is on Survey No.598/1. P.W. 1 Plaintiff has said that Survey No. 598/2 is also a trust property. It appears that both the properties are adjoining each other and therefore in the absence of any evidence from the purchaser defendant - appellant about the title of the property being vested with his vendor Bhiku, the trial court was justified in decreeing the suit.

5. Counsel for the appellants further contended that the appellant - defendant had taken plea of adverse possession. In fact both the pleas i.e. being the owner of the property by virtue of title acquired from the vendor and plea of adverse possession are contradictory, conflicting and self obstructive. There is nothing on record to show that the appellant was enjoying possession of the property, openly, adversely, continuously to the knowledge of the real owner i.e. trust. The judgment of the trial court is proper therefore no interference is called for. There is no merit in this appeal, the same is dismissed with costs.

19/1/2005 (D. G. DESHPANDE,J.)